U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
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By ______ Deputy

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MCW, INC., d/b/a BERNARD HALDANE ASSOCIATES, **PLAINTIFF,** **v.** **BADBUSINESSBUREAU.COM, LLC, d/b/a, WWW.RIPOFFREPORT.COM and WWW.BADBUSINESSBUREAU.COM, and EDWARD MAGEDSON, a/k/a ED MAGIDSON,** **DEFENDANTS.**	**CIVIL ACTION** **No. 3:02-CV-2727-G**

PLAINTIFF'S SUPPLEMENTATION TO RECORD WITH FEDERAL COURT DECISION FROM NEW JERSEY

Dated: February 6, 2004

Respectfully submitted,

Thomas B. Walsh, IV [signature]

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The undersigned hereby certifies that a true and correct copy of the foregoing document was served as shown below on February 6, 2004, on the following counsel of record:

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

ALYON TECHNOLOGIES, Plaintiff, vs. BADBUSINESSBUREAU.COM, LLC., Defendant.	CIVIL ACTION NO.: 03-1992 (JCL) **MEMORANDUM AND ORDER**

LIFLAND, District Judge

This matter ultimately concerns the enforcement and domestication of a foreign judgment issued by the Eastern Carribean Supreme Court in the High Court of Justice, Federation of Saint Christopher and Nevis, Saint Christopher Circuit, for monetary damages in the approximate amount of ten million dollars and for permanent injunctive relief relating to the publishing of certain allegedly defamatory statements on an interactive website. Presently before the Court is a motion by Plaintiff Alyon Technologies ("Plaintiff" or "Alyon") for preliminary injunctive relief pursuant to Federal Rule of Civil Procedure 65 based upon an alleged improper transfer of assets by defendant Badbusinessbureau.com, LLC ("Defendant" or "Badbusinessbureau") to a new entity, which purportedly renders the foreign judgment issued against Badbusinessbureau ineffectual by frustrating Alyon's prospects of final recovery. Also before the Court is Badbusinessbureau's motion to dismiss for lack of personal jurisdiction. For the reasons set forth herein, Badbusinessbureau's motion to dismiss for lack of personal jurisdiction and Alyon's motion for preliminary injunctive relief will both be denied.

BACKGROUND

Alyon is a Delaware corporation with its principal place of business in Secaucus, New Jersey. Alyon provides billing services that allow direct billing to end-users of websites on a per-minute or per-usage basis. This billing method is typically utilized in connection with the viewing of adult entertainment websites.

Badbusinessbureau is a Nevis, West Indies limited liability company with its principal place of business in Arizona. Badbusinessbureau has no assets, employees, or office in Nevis. At all relevant times, Badbusinessbureau owned and operated a website called the Rip-off Report, which mainly consists of reports filed by consumers about allegedly wrongful business practices of various companies. The Rip-off Report thus serves as a public forum for consumers to publish their opinions about and experiences with companies.

Badbusinessbureau's website is interactive. Consumers who wish to post a report select "file a report" on the website home page, fill out personal identification information, obtain a password, and then post their own report. The purpose of the password is to give the customer exclusive access to add updates to the report. These reports are searchable by company name, title, text, and city, state, or country in which the company is located. Through its website, Badbusinessbureau also organizes class actions by placing attorneys in contact with alleged victims.

Badbusinessbureau claims that it generally does not investigate or confirm the accuracy of any posting. Badbusinessbureau also claims that it does not add any content to any report posted by consumers. This latter contention, however, is contradicted by the record in this case, which shows a clear working relationship between Badbusinessbureau's founder and editor, Ed

Magedson ("Magedson"), and "consumer advocate" Gregory Strausbaugh ("Strausbaugh"). "Consumer Advocate" is a title utilized by Badbusinessbureau's staff and volunteers. Under the direction of Magedson, Strausbaugh not only made various postings about Alyon on the Rip-off Report, but also contacted various New Jersey public officials, community leaders, media personnel, and attorneys about Alyon's allegedly improper business practices. (See generally Second Supplemental Decl. of Ilaria Maggioni.).

Badbusinessbureau's website is also commercial in nature. Through the website, it offers Magedson's "Do-It-Yourself Guide: How to get Rip-Off Revenge and your money back too." It also solicits donations and sells advertising space. There are certain fees associated with the website as well. Badbusinessbureau has a policy of charging twenty dollars for certain rebuttals posted by companies, though it does not appear that it has actually ever charged a rebuttal fee. There is also a policy relating to promotional and collection fees. Finally, there is a fee for assisting companies in resolving disputes with customers. In at least one instance, Badbusinessbureau attempted to charge a company, which had been the target of numerous consumer reports, $50,000 for assisting it in reaching out to alleged victims and resolving consumer complaints posted on the Rip-off Report.

Alyon has been the subject of over 1300 reports posted by consumers who claim to have been victimized by Alyon's billing practices. In these reports, consumers claim they have been charged by Alyon for computer services which they did not request and did not agree to, and that illegal dial-ups have been placed by Alyon onto their computers without their permission.

Alyon has also been the target of numerous investigations by the offices of state Attorney Generals and the Federal Trade Commission. On May 13, 2003, the Federal Trade Commission

("FTC") filed a complaint against Alyon and its founder, Stephane Toubal, in the United States District Court for the Northern District of Georgia, alleging unfair and deceptive trade practices. It also alleges that Alyon has been unjustly enriched as a result of their unlawful practices. FTC has moved for a preliminary injunction, which the court has denied, being satisfied that Alyon has already implemented, on a nationwide basis, practices and procedures set forth in a Pennsylvania Assurance of Voluntary Compliance ("AVC"). Alyon, consequently, has consented to an order much like the AVC. Alyon has also agreed to provide refunds to customers who can prove they deserve refunds. This matter is still pending in the Georgia District Court.

Alyon alleges that Badbusinessbureau is publishing defamatory material on the Rip-off Report, thereby causing it severe economic and non-economic harm. On February 24, 2003, Alyon obtained a temporary order from the High Court of Justice, Federation of Saint Christopher and Nevis, Saint Christopher Circuit, directing that, *inter alia*, Badbusinessbureau not remove any of its assets that are in the Federation of Saint Christopher and Nevis, up to the value of ten million dollars, or otherwise dispose of or diminish the value of any its assets whether they are in or outside the jurisdiction until March 18, 2003, the scheduled date of the subsequent hearing. On February 25, 2003, Badbusinessbureau received its first notice of the matter pending in Saint Christopher. Because its attorneys in the United States were not licensed to practice in Saint Christopher or Nevis, Badbusinessbureau sought to retain a Nevis attorney to represent it in the Alyon matter. Magedson spoke with or left messages for more than six Nevis attorneys, none of whom returned his phone call or otherwise followed up. He did, however, successfully retain an attorney named Terence V. Byron ("Byron") just prior to the March 18 hearing. Badbusinessbureau sent Byron a $7500 retainer and copies of the relevant documents, but Byron did not appear at the March 18 hearing, apparently due to the late notice.

On March 20, 2003, the High Court of Justice issued a second order, extending the previous asset freeze order until March 28, 2003. A third order was then entered on March 28, which stated that based upon an affidavit submitted by Alyon, Badbusinessbureau is restrained and enjoined "from publishing and distributing by way of posting on [its] websites . . . or anywhere whatsoever any derogatory and/or defamatory material about [Alyon]." It also continued the previous orders regarding the asset freeze until further order of the court. In response, Byron had Badbusinessbureau prepare an affidavit of intended compliance with the two orders. The affidavit stated that the forum chosen by Alyon was not proper based on the convenience, expense, availability of witnesses, law governing the transactions, and parties' locations. It also stated that the orders were defective and unenforceable on various grounds. Badbusinessbureau does not know if Byron ever filed the affidavit with the Court.

On April 15, 2003, Badbusinessbureau was held to be in contempt of court for failing to comply with the disclosure requirements of the freeze orders issued pursuant to the February 24 and March 20 orders. Badbusinessbureau sought leave to appeal the contempt of court finding. Leave to appeal was denied.

On May 2, 2003, Alyon filed a complaint in this Court seeking to enforce and domesticate, pursuant to principles of comity, the interim orders issued by the court in St. Christopher.

On July 4, 2003, based on Alyon's Re-Amended Statement of Claim and Badbusinessbureau's default in filing and serving a Defense to the Claim, the High Court of

Justice issued a final judgment, ordering Badbusinessbureau to pay Alyon a sum exceeding ten million dollars and permanently enjoining it from publishing any derogatory or defamatory materials about Alyon on its website(s) or anywhere else. Alyon ultimately seeks enforcement of this final judgment.

Badbusinessbureau has filed a motion to dismiss the complaint on the following grounds: (1) improper service of process; (2) lack of personal jurisdiction; (3) principles of comity; and (4) Communications Decency Act. Alyon responded by filing a cross-motion for summary judgment. Both motions are currently pending before this Court.

On November 12, 2003, Alyon filed the present motion for preliminary injunctive relief, based on an allegedly improper transfer by Badbusinessbureau of its domain names badbusinessbureau.com, ripoffreport.com, and ripoffrevenge.com to a new entity, Xcentric Ventures, LLC ("Xcentric"). Alyon alleges that Badbusinessbureau is dissipating its assets in an effort to render the judgment issued against it in St. Christopher ineffectual. Alyon seeks an order rescinding the transfers and temporarily restraining similar transfers of assets. Alyon also requests that the freeze orders already entered in Saint Christopher be declared enforceable in the United States.[1]

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[1]Alyon has also filed a motion for Rule 11 sanctions based upon Badbusinessbureau's alleged misrepresentations of fact and law. The Court will defer judgment on this motion and any future motions for sanctions until the culmination of the litigation.

BADBUSINESSBUREAU'S MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION

Because Badbusinessbureau argues that this Court lacks personal jurisdiction and is therefore without authority to enter a preliminary injunction, the Court must first address the issue of jurisdiction before proceeding to the merits of Plaintiff's motion.

A. Standard of Review

Once a jurisdictional defense has been raised by a defendant, the burden falls upon the plaintiff to demonstrate by a preponderance of the evidence that the defendant had sufficient contacts with the forum state to support jurisdiction. Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119, 1121 (W.D. Pa. 1997) (citing Mellon Bank (East) PSFS, N.A. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992)). The Third Circuit has stated that when a challenge to personal jurisdiction is raised, "the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence," and "at no point may a plaintiff rely on the bare pleadings alone." Time Share Vacation Club v. Atlantic Resorts, Ltd., 735 F.2d 61, 67 n.9 (3d Cir. 1984); see also Stranahan Gear Co., Inc. v. NL Indus., Inc., 800 F.2d 53, 58 (3d Cir. 1986). The Court must accept the plaintiff's allegations as true and construe all disputed facts in favor of the plaintiff. Moneygram Payment Sys., Inc. v. Consorcio Oriental, S.A., 65 Fed.Appx. 844, 849 (3d Cir. 2003) (citing Carteret Sav. Bank v. Shushan, 954 F.2d 141, 142 n.1 (3d Cir. 1992), cert. denied, 506 U.S. 817 (1992)).

B. Analysis

Federal Rule of Civil Procedure 4(e) permits district courts to exercise jurisdiction over non-resident defendants only as authorized by the laws of the state where the court resides. Fed.

R. Civ. P. 4(e);[2] Sunbelt Corp. v. Noble, Denton & Assocs., Inc., 5 F.3d 28, 31 (3d Cir. 1993); Provident Nat'l Bank v. California Fed. Sav. & Loan Ass'n, 819 F.2d 434, 436 (3d Cir. 1987); Dent v. Cunningham, 786 F.2d 176, 175 (3d Cir. 1986). New Jersey permits the exercise of jurisdiction to the fullest extent allowed under the Fourteenth Amendment to the United States Constitution. N.J. Ct. R. 4:4-4(b)(1) (permitting the exercise of jurisdiction "consistent with due process of law"); Charles Gendler & Co., Inc. v. Telecomm. Equip. Corp., 102 N.J. 460, 469 (1986); Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971); see also Mesalic v. Fiberfloat Corp., 897 F.2d 696, 698 (3d Cir. 1990). Accordingly, this Court's analysis must focus on whether the exercise of jurisdiction comports with the requirements of the Due Process Clause of the Fourteenth Amendment.

The constitutional guarantee of due process limits federal jurisdiction to shield "persons from the judgments of a forum with which they have established no substantial ties or relationship." General Elec. Co. v. Deutz Ag, 270 F.3d 144, 150 (3d Cir. 2001). Personal jurisdiction is thus appropriate only when the defendant has "purposefully established 'minimum contacts' in the forum State." Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474 (1985) (quoting International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945)); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980) (personal jurisdiction rests on conduct and connection with forum State such that defendant "should reasonably anticipate being haled into court there"). Minimum contacts describe actions by which the defendant "purposefully avails itself of the privilege of conducting activities within the forum State," and thereby invokes "the benefits and protections of its laws." Asahi Metal Indus. Co., Ltd. v. Superior Court of California, 480 U.S. 102, 109 (1987) (quoting Burger King, 471 U.S. at 475); Remick v. Manfredy, 238 F.3d 248, 255 (3d Cir. 2001). In addition to adequate minimum contacts, courts must determine whether the exercise of personal jurisdiction sought by the plaintiff offends "traditional notions of fair play and substantial justice." Burger King, 471 U.S. at 476-77; International Shoe, 326 U.S. at 316; Remick, 238 F.3d at 255. The sufficiency of the defendant's minimum contacts with the forum state will therefore vary with the "quality and the nature of the defendant's activity." Hanson v. Denckla, 357 U.S. 235, 253 (1958).

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[2] Fed. R. Civ. P. 4(e)(1)(A) states that:
Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States . . . pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State.

Sufficient minimum contacts will give rise to either specific or general jurisdiction. Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414-15 (1984); Remick, 238 F.3d at 255. "Specific personal jurisdiction exists when the defendant has 'purposefully directed his activities at residents of the forum and the litigation results from alleged injuries that arise out of or related to those activities.'" BP Chems. Ltd. v. Formosa Chem. & Fibre Corp., 229 F.3d 254, 259 (3d Cir. 2000) (quoting Burger King, 471 U.S. at 472). Alternatively, general jurisdiction exists when a defendant engages in "continuous and systematic" contacts with the forum state, whether or not the contacts are related to the injury giving rise to the cause of action. Remick, 238 F.3d at 255. The greater reach of general jurisdiction requires "significantly more than mere minimum contacts," and the plaintiff seeking to exert general jurisdiction must show that the defendant's contacts with the forum are "continuous and substantial." Provident Nat'l Bank, 819 F.2d at 437 (citations omitted). The threshold for the exercise of general jurisdiction, then, is significantly higher than for the exercise of specific jurisdiction. Amberson Holdings LLC, Inc. v. Westside Story Newspaper, 110 F.Supp.2d 332, 334 (D.N.J. 2000) (citing Provident Nat'l Bank, 819 F.2d at 437).

The question presented here is whether Defendant's operation of an interactive website, in conjunction with other related non-Internet activities, constitutes sufficient presence in the State of New Jersey to support the assertion of either specific or general jurisdiction. Defendant argues that because it merely operates a website, which is primarily passive and non-commercial, it has no sufficient contacts with New Jersey, thus rendering the exercise of personal jurisdiction improper. Plaintiff responds that Defendant's contacts with New Jersey are enough to support the application of both general and specific jurisdiction. Resolution of this issue, therefore, compels the Court to consider the exercise of personal jurisdiction within the context of the Internet. Although the omnipresence of the Internet–the capacity of website operators to engage in global communications and/or transactions from a single source–requires the Court to be cognizant of the unique nature and quality of Internet-related contacts, traditional due process principles still obtain, thereby preserving the basic structure of personal jurisdiction analysis.

1. General Jurisdiction

The Court begins with an analysis of whether Defendant's contacts with New Jersey are sufficient to confer general jurisdiction. Plaintiff argues that this Court may exercise general jurisdiction because Defendant regularly solicits postings from and offers fee-based services to New Jersey residents; solicits fees from New Jersey companies; makes postings about and from New Jersey companies; offers to sell books to New Jersey consumers; solicits donations from New Jersey consumers; and engages in the organization of class actions against New Jersey companies. Plaintiff's assertions notwithstanding, the question of general jurisdiction is not a difficult one. Defendant has no physical presence–office, employees or assets– in New Jersey. Moreover, the mere maintenance of an interactive website, without more, does not support the exercise of personal jurisdiction. Toys "R" Us, Inc. v. Step Two, S.A., 318 F.3d 446, 454 (3d Cir. 2003). And, as set forth below, the additional contacts referred to by Plaintiff are not substantial enough to constitute "continuous and systematic" activity within New Jersey.

Three recent cases from other circuits are instructive. In Revell v. Lidov, 317 F.3d 467, 471 (5th Cir. 2002), the Fifth Circuit confronted the issue of general jurisdiction in the context of a defamation claim arising out of a professor's authorship of an article which he printed on an internet bulletin board hosted by Columbia University. Plaintiff argued that general jurisdiction over Columbia was proper because its website provided internet users the opportunity to subscribe to the *Columbia Journalism Review*, purchase advertising on the website or in the journal, and submit electronic applications for admission. Id. The Fifth Circuit disagreed, noting the stark contrast between Columbia's contacts with the forum and the facts of the Supreme Court's seminal case on general jurisdiction, Perkins v. Benguet Consol. Mining Co., 342 U.S. 437 (1952). Id. In Perkins, the defendant foreign corporation's contacts with the State of Ohio were sufficient to confer general jurisdiction, given that it temporarily relocated to Ohio, its president resided in Ohio, the records of the corporation were in Ohio, accounts were held in Ohio banks, and all key business decisions were made in Ohio. 342 U.S. at 447-48. After noting that Columbia never received more than twenty internet subscriptions per year for the journal from Texas residents, the Fifth Circuit held that Columbia's internet presence in Texas fell short of the general jurisdiction standard. Revell, 317 F.3d at 471.

In Bird v. Parsons, 289 F.3d 865, 874 (6th Cir. 2002), the Sixth Circuit found general jurisdiction to be lacking over a non-resident business that registered domain names despite the fact that over four thousand Ohio residents had registered domain names with the defendant. The Court held that these registrations were insufficient to establish general jurisdiction because the mere maintenance of a website that is accessible to anyone over the Internet is insufficient to justify general jurisdiction. The Court further noted that the ability of viewers to register domain names on the website did not alter that conclusion because it simply enabled the defendant to do business with Ohio residents, a fact that does not permit general jurisdiction. Finally, the fact that, unlike direct marketing, registrants initiated the contact with defendant also contributed to the Court's holding. Id.

By contrast, in Gator.Com Corp. v. L.L. Bean, Inc., 341 F.3d 1072, 1078 (9th Cir. 2003), the Ninth Circuit found that a retailer had sufficient contacts with California to permit the exercise of general jurisdiction, given its interactive website and extensive marketing and sales in the state. The critical facts here were that L.L. Bean made substantial sales to state residents, solicited business in the state, and served the state's markets. It targeted its electronic advertising at California and maintained a highly interactive, as opposed to "passive," website from which very large numbers of California consumers regularly made purchases and interacted with L.L. Bean sales representatives. Additionally, L.L. Bean had shipped large quantities of products to California and maintained continuous contacts with California vendors. The Court held that there was nothing "random, fortuitous, or attenuated" about subjecting L.L. Bean to the authority of the court, as it had deliberately and purposefully availed itself of the benefits of doing business within California. Id. at 1079.

This case is closer to Revell and Parsons than to L.L. Bean. Applying the "continuous and systematic" contacts test, it is evident that the requisite level of contact is missing. This is particularly true given the economic reality of Defendant's activities in New Jersey. There are two main components to its website. First, visitors to the site can read reports about various businesses. Second, consumers may post their own reports on the site. Both of these services are free. It would nonetheless be wrong to claim that there is no economic aspect to Defendant's website. To establish general jurisdiction, however, there must be more than mere minimum contacts. Provident Nat'l Bank, 819 F.2d at 437. As such, the salient point is that the overall commercial nature of the website does not manifest a deliberate and substantial presence in New Jersey, a fact which distances this case from the Supreme Court's decision in Perkins and the Ninth Circuit's recent decision in L.L. Bean. Indeed, as both Revell and Parsons suggest, the mere fact that an operator of an interactive website has additional commercial contacts with the forum does not compel a finding of general jurisdiction unless those contacts rise to the level of "continuous and systematic" activity.

The record demonstrates that Defendant actually sold and shipped only eight copies of Magedson's book to New Jersey. Compare Revell, 317 F.3d at 471 (holding sale of twenty journal subscriptions not sufficient to confer general jurisdiction). In addition, although the books are advertised on the Rip-off Report website, they are actually purchased through a separate website. Plaintiff's reference to the fact that Defendant offers fee-based services to New Jersey consumers and solicits fees from New Jersey residents is also unavailing. It is true that Defendant has a rebuttal fee policy, which states that if a company files more than four rebuttals, it will be charged a certain fee. The purpose of this policy is to dissuade companies from filing numerous form rebuttals without addressing the substance of consumer complaints. More importantly, Defendant has never actually collected any rebuttal fee from any company. And with respect to the other possible fees alluded to by Plaintiff, it has likewise never charged any New Jersey company for any such fee, including promotional and collection fees, notwithstanding the website's statements regarding the existence of these fees. Plaintiff also contends that Defendant offers advertising space for sale on its website. Yet, it has never sold advertising space to any New Jersey resident. Finally, Plaintiff avers that Defendant runs a shakedown of businesses by demanding substantial payments to "resolve" consumer complaints. Again, there is no evidence that Defendant engaged in such behavior with New Jersey companies. It is therefore clear that Defendant's commercial contacts with New Jersey are insufficient to support the exercise of general jurisdiction.

Aside from the commercial nature of Defendant's activities, Plaintiff argues that Defendant has sufficient non-commercial contacts with New Jersey to establish general jurisdiction. Specifically, Plaintiff argues that Defendant (1) actively solicits web postings from New Jersey residents; (2) makes postings about New Jersey companies; and (3) organizes class actions against New Jersey companies. Plaintiff, however, has offered insufficient evidence to support these allegations. There is no evidence in the record that Defendant solicits web postings from New Jersey consumers or otherwise targets New Jersey residents, as it appears to solicit postings from any consumer from any location. Likewise, the record does not support Plaintiff's contention that Defendant regularly makes postings about New Jersey companies; rather, it appears that individual consumers are primarily responsible for the various postings on Defendant's website. And even assuming that Defendant does exercise some measure of editorial control over the substance of consumer postings (for which there is some evidence in record, at least as pertains to Plaintiff), such contacts are not of such a continuous and systematic nature that New Jersey may exercise general jurisdiction. Nor does the fact that Defendant sought to organize a class action against Plaintiff in New Jersey support the assertion of general jurisdiction, as the related contacts do not constitute an ongoing, systematic and substantial presence in New Jersey. For these reasons, Defendant is not subject to general jurisdiction in New Jersey. Accordingly, the Court must determine whether the exercise of specific jurisdiction is appropriate.

2. Specific Jurisdiction

A three-part test has emerged to determine whether the exercise of specific jurisdiction over a non-resident defendant is constitutionally permissible: (1) the defendant must have sufficient "minimum contacts" with the forum state, (2) the claim asserted against the defendant must arise out of those contacts, and (3) the exercise of jurisdiction must be reasonable. Zippo, 952 F.Supp. at 1122-23; Imo Indus., Inc. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998).

a) Purposeful Availment and Minimum Contacts

The "constitutional touchstone" of the minimum contacts analysis is embodied in the first prong – "whether the defendant purposefully established contacts" with the forum state. Zippo, 952 F.Supp. at 1123 (citing Burger King Corp., 471 U.S. at 475). In this case, Defendant's activities demonstrate that it deliberately established minimum contacts with New Jersey and purposefully availed itself of the privilege of conducting activities in this forum under both the "sliding scale" analysis developed for Internet activities and the traditional "effects" doctrine.

(i) "Sliding Scale" Test

In Toys "R" Us, the Third Circuit set forth the standard for specific personal jurisdiction based upon a defendant's operation of a commercially interactive website. 318 F.3d at 452. The Court confronted the question as to whether the operation of an interactive website accessible in the forum state is sufficient to support specific jurisdiction, or whether there must be additional evidence that the defendant has "purposefully availed" itself of the privilege of engaging in activity in that state. Id. at 451. After noting that the mere operation of an interactive website should not subject the operator to jurisdiction anywhere in the world, the Court held that there must be evidence that the defendant "'purposefully availed' itself of conducting activity in the forum state, by directly targeting its website to the state, knowingly interacting with residents of the forum state via its web site, or through sufficient other related contacts." Id. at 454. It follows that there must be "something more" than the mere operation of an interactive website to properly confer personal jurisdiction. Id.

In articulating this standard, the Third Circuit discussed the opinion in Zippo, the "seminal authority regarding personal jurisdiction based upon the operation of an Internet web site." Id. at 452. The court in Zippo grouped the various cases into three separate categories, depending upon the commercial interactivity of the website. "[T]he likelihood that personal jurisdiction can be constitutionally exercised is directly proportionate to the nature and quality of commercial activity that an entity conducts over the Internet. This sliding scale is consistent with well developed personal jurisdiction principles." Zippo, 952 F.Supp. at 1124. The first category consists of "situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction . . . over the Internet, personal jurisdiction is proper." Id. The second category of cases "is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site." Id. The third category is "situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise of personal jurisdiction." Id.

In this case, any user of the Internet can post material on Defendant's website, which implies that individuals send information to be posted and receive information that others have posted. Defendant's website is thus interactive and falls into the more amorphous middle category of the Zippo sliding scale. Whereas websites occupying the first and third categories of the sliding scale lend themselves to relatively simple jurisdictional analysis, interactive websites which lack an obvious business purpose present a more difficult question. The Court, consequently, must evaluate the level of interactivity to determine whether the defendant has "purposefully availed" itself of the privilege of engaging in activity in New Jersey. Toys "R" Us, Inc., 318 F.3d at 451-52. What is especially relevant here is that Toys "R" Us permits the Court to consider the Defendant's non-Internet activities as a part of the "purposeful availment" calculus. Id. at 453. In other words, non–Internet contacts may form part of the "something more" needed to establish jurisdiction. The exact mix of Internet and non-Internet contacts required to support an exercise of personal jurisdiction is a determination that "should be made on a case-by-case basis by assessing the 'nature and quality' of the contacts." Id. The transmission of information to and from New Jersey through Defendant's interactive website must therefore be considered alongside its other contacts with the forum.

Contrary to Defendant's assertions, it does not merely operate a passive website, which facilitates the free transmission of ideas relating to allegedly illicit business practices. There are commercial aspects to the website, i.e. sale of books and advertising space, soliciting of donations, and offering of dispute resolution services. And while this relatively moderate level of commercial activity fails to confer general jurisdiction, it contradicts Defendant's contention that it operates a merely passive website. More importantly, the website is highly interactive. If consumers want to post a report, they select "file a report" on the home page, fill out personal identification information and obtain a password. New Jersey residents have made postings on the website. Defendant thus obtained personal identification information from and provided passwords to residents of the state. Previous reports are searchable by the state in which the company is located and other relevant categories. These consumer reports are available to governmental agencies for prosecuting and investigating allegedly fraudulent cases relating to various companies. Additionally, Defendant responds to emails which contain complaints about companies by inviting the consumer to post a report about their experience. Defendant also coordinates class actions by bringing alleged victims together with attorneys willing to sue the company after reading the relevant postings. The level of interactivity, however, is only one factor in the Court's analysis.

Through these interactive channels, Plaintiff alleges that Defendant published defamatory statements and further organized an effort to elicit a public response against it in New Jersey. Defendant argues that it does not add any content to any report posted by consumers. However, the record shows that Defendant's editor, Ed Magedson, instructed Gregory Strausbaugh, a volunteer associated with Defendant, in preparing the content of certain postings relating to Plaintiff. Magedson reviewed drafts, provided edits, and made other suggestions relating to Strausbaugh's postings. Defendant's involvement in this respect was anything but passive. Insofar as Defendant allegedly transmitted defamatory statements to New Jersey about a New Jersey resident corporation, the Fourth Circuit's decision in AKS Scan Inc. v. Digital Serv. Consultants, Inc., 293 F.3d 707 (4th Cir. 2002), is instructive. In adapting the Zippo model, the Fourth Circuit set forth a three-part test for reconciling contacts through electronic media with standard due process principles: "the State may . . . exercise judicial power over a person outside of the State when that person (1) directs electronic activity into the State, (2) with the manifested intent of engaging in business or other interactions within the State, and (3) that activity creates, in a person within the State, a potential cause of action cognizable in the State's courts." 293 F.3d at 714. This standard underscores the requirement that there must be something intentional about a defendant's conduct vis-a-vis the forum. To publish allegedly defamatory statements about a New Jersey resident corporation through the use of an interactive website, the primary purpose of which is to facilitate class actions and public investigations against companies, and which is accessible to New Jersey residents, manifests a specifically intended interaction with the state of New Jersey. The intentionality of such conduct contributes to the "something more" required under the Toys "R" Us calculus.

The deliberateness of Defendant's activity is magnified when considered in light of its non-Internet contacts. The record demonstrates that Defendant actively and purposefully spearheaded an effort to trigger investigations into Plaintiff's activities in New Jersey. Defendant sought to organize a class action against Plaintiff by having its staff communicate with attorneys located in New Jersey. Defendant's "Chief Investigator/Consumer Advocate" Frank Torelli reported Plaintiff to the FBI and public authorities in New Jersey in order to have it investigated for alleged improper commercial practices. Moreover, Magedson collaborated with Strausbaugh in contacting New Jersey public officials, community leaders and media personnel to raise the public awareness about Plaintiff's allegedly illegal and immoral behavior. Strausbaugh made repeated efforts to contact New Jersey officials–from the Governor of the State of New Jersey to the Catholic Archbishop of Newark. Indeed, the record suggests that Magedson directed Strausbaugh to "try and stir up trouble in NJ. . . " The quality of the non-Internet contacts in this case, therefore, weighs heavily in favor of the assertion of specific jurisdiction.

Defendant argues that Strausbaugh acted on his own behalf, and in furtherance of this argument, submits two sworn declarations from both Magedson and Strausbaugh, stating that Strausbaugh never worked for the Rip-off Report. This argument is unpersuasive. The facts reveal a clear working relationship between Magedson and Strausbaugh, in which Strausbaugh acted under Magedson's supervision in both publishing various statements about Plaintiff and reaching out to New Jersey officials and members of the media. It thus makes no difference that Strausbaugh was never formally employed by Defendant, especially in light of the fact that Defendant attempted to achieve its objectives through the use of volunteer assistance. In any event, Strausbaugh identified himself as a "Consumer Advocate," a title used by Defendant's staff, on more than one occasion and apparently received expense reimbursements for some of his efforts.

Defendant's actions constitute a deliberate undertaking to do or cause an act or thing to be done in New Jersey–the "something more"–which permits the exercise of specific jurisdiction. See Toys "R" Us, 318 F.3d at 453-54. Because it participated in, and indeed organized, a campaign to impact Plaintiff in New Jersey, Defendant should reasonably have anticipated being haled into court here. Id. at 451 (citing World-Wide Volkswagen Corp., 444 U.S. at 297). In sum, given the high level of interactivity of Defendant's website, when considered in conjunction with the nature and quality of Defendant's Internet and non-Internet contacts, the assertion of specific jurisdiction is consistent with principles of due process.

(ii) "Effects" Test

Specific jurisdiction is also proper under the "effects" test. Conduct that is specifically directed at a plaintiff in the forum state, and facilitated by the use of the Internet, may constitute a sufficient basis for the assertion of personal jurisdiction based on the "effects" test established by the Supreme Court in Calder v. Jones, 465 U.S. 783 (1984). In Calder, an editor and writer for the *National Enquirer*, both residents of Florida, were sued in California for libel arising out of an article published in the *Enquirer.* The Supreme Court upheld the exercise of personal jurisdiction over the two defendants because they had "expressly aimed" their conduct towards California. 465 U.S. at 789. The allegedly libelous story concerned the California activities of a California resident; it was drawn from California sources; the brunt of the harm, in terms of plaintiff's emotional distress and the injury to professional reputation, was suffered in California. "In sum, California [was] the focal point both of the story and of the harm suffered." Id.

The Third Circuit has adopted a three-prong test for determining the applicability of Calder:

First, the defendant must have committed an intentional tort. Second, the plaintiff must

> have felt the brunt of the harm caused by that tort in the forum, such that the forum can be said to be the focal point of the harm suffered by the plaintiff as a result of the tort. Third, the defendant must have expressly aimed his tortious conduct at the forum, such that the forum can be said to be the focal point of the tortious activity.

Imo Indus., Inc., 155 F.3d at 256. "[U]nder this test a court may exercise personal jurisdiction over a nonresident defendant who commits an intentional tort by certain acts outside the forum which have a particular type of effect upon the plaintiff within the forum." Id. at 261. The question thus becomes whether the transmission of allegedly defamatory information via the Internet to New Jersey, causing harm there, when considered in conjunction with other non-Internet contacts, subjects Defendant to jurisdiction in New Jersey. Applying the three-prong Imo test, the Court believes that it does.

Plaintiff has asserted that Defendant committed the intentional tort of defamation, thus satisfying the first prong of the Imo test. Plaintiff also "felt the brunt of the harm" in New Jersey where it had its main office. The various postings on Defendant's website all refer to New Jersey as Plaintiff's principal business location. The deliberate contacts with New Jersey public officials, community leaders and media personnel also focus on Plaintiff's activities within the state, where it allegedly hides its illicit business practices. The damage to Plaintiff's reputation, assuming the defamatory nature of the statements, will occur mostly in New Jersey because any public response will be prompted by New Jersey officials and media channels. Moreover, the record indicates that Defendant sought to organize a class action against Plaintiff in New Jersey by contacting New Jersey attorneys. Clearly, then, the focal point of the harm suffered by Plaintiff is New Jersey. Since there is nothing fortuitous about New Jersey's relationship to the alleged harm, and no other location for the alleged harm has been suggested, Plaintiff has met the second prong of the Imo analysis. The third prong requires the Court to determine whether Defendant expressly aimed its tortious conduct at the forum. Given the deliberate attempts to contact New Jersey public officials, community leaders, media personnel, and attorneys, prompted by the numerous statements published on Defendant's website, there is no question that Defendant expressly aimed its conduct at New Jersey. Defendant undoubtedly knew that Plaintiff was located in New Jersey and that by causing harm to Plaintiff's reputation, not to mention the potential harm attendant to a civil class action or criminal investigation by New Jersey authorities, the brunt of the injury would be felt within the state. Defendant thus "manifest[ed] behavior intentionally targeted at and focused on" the forum, establishing New Jersey as the focal point of the allegedly tortious conduct. Imo Indust., Inc., 155 F.3d at 265.

Accordingly, through both its Internet and non-Internet activities, the Court concludes that Defendant established minimum contacts with New Jersey.

b) Relationship of Forum-Related Contacts

The second requirement for specific personal jurisdiction is that the claim "arise out of or relate to the defendant's contact with the forum." Burger King Corp., 471 U.S. at 472 n.15 (citations omitted). This requirement protects a defendant from being haled into court in a foreign jurisdiction based on "the unilateral activity of another party or third person," as opposed to the defendant's own deliberate contacts with the forum. Id. at 475 (citations omitted). Plaintiff brings this action to enforce a foreign judgment against Defendant, which was based upon Defendant's allegedly tortious activity in publishing defamatory statements and eliciting a public response against Plaintiff's business practices. As discussed above, New Jersey was the focal point of this activity. Thus, Plaintiff's present claim arises out of Defendant's New Jersey-related activities.

c) Reasonableness of Jurisdiction

Once it is clear that a defendant has minimum contacts with the forum state, the inquiry turns to whether the assertion of jurisdiction comports with traditional notions of fair play and substantial justice. Zippo, 952 F.Supp. at 1123 (citing International Shoe Co., 326 U.S. at 316). The "reasonableness" prong exists to protect defendants against unfairly inconvenient litigation. World-Wide Volkswagen, 444 U.S. at 292. When considering the reasonableness of a particular forum, the court must consider the burden on the defendant in light of other factors including:

> the forum state's interest in adjudicating the dispute; the plaintiff's interest in obtaining convenient and effective relief, at least when that interest is not adequately protected by the plaintiff's power to choose the forum; the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.

Id. (citations omitted).

Defendant argues that the exercise of jurisdiction would be unreasonable in this case. The Court disagrees. New Jersey certainly has a substantial interest in adjudicating disputes arising from allegedly defamatory statements about resident corporations. This is particularly so where a defendant attempts to solicit the support of New Jersey public officials in conducting investigations pertaining to the activities New Jersey corporations. The Court also gives due regard to Plaintiff's choice to seek relief in New Jersey. These concerns outweigh the burden created by forcing Defendant to defend suit in New Jersey, especially where Defendant published allegedly defamatory statements about the activities of a New Jersey resident corporation and also targeted its non-Internet contacts towards New Jersey. Defendant argues that Plaintiff could easily have filed suit in Defendant's home state of Arizona. This may be true, but it does not overcome otherwise clear justifications for the exercise of jurisdiction. The Court does not consider the inconvenience to be so great as to constitute a deprivation of due process. The Due Process Clause is not a "territorial shield to interstate obligations that have been voluntarily assumed." Burger King Corp., 471 U.S. at 474.

C. Conclusion

For the foregoing reasons, the assertion of specific personal jurisdiction over Defendant is appropriate. Defendant's motion to dismiss for lack of personal jurisdiction will therefore be denied.

As the exercise of personal jurisdiction over Defendant is proper, the Court will now examine the merits of Plaintiff's motion for a preliminary injunction.

ALYON'S MOTION FOR A PRELIMINARY INJUNCTION

A. Standard

An injunction is an extraordinary remedy which should be granted only in limited circumstances. AT&T v. Winback & Conserve Program, Inc., 42 F.3d 1421, 1426-27 (3d Cir. 1994). An injunction is issued only where the moving party produces sufficient evidence to establish that the following four factors favor preliminary relief: (1) the likelihood the plaintiff will prevail on the merits; (2) the extent to which plaintiff is being irreparably harmed by the conduct at issue; (3) the extent to which the non-moving party will suffer harm if the injunction is granted; and (4) the public interest implicated. Brian B. ex rel. Lois B. v. Comm'r. of Pennsylvania Dept. of Educ., 230 F.3d 582, 585 (3d Cir. 2000); Allegheny Energy, Inc. v. DQE, Inc., 171 F.3d 153, 158 (3d Cir. 1999); Opticians Ass'n v. Independent Opticians, 920 F.2d 187, 191-92 (3d Cir.1990). The Third Circuit, moreover, places particular emphasis on the first two factors, the likelihood of success and irreparable harm. Instant Air Freight Co. v. C.F. Air Freight, Inc., 882 F.2d 797, 800 & n.5 (3d Cir. 1989). A "failure to show a likelihood of success or a failure to demonstrate irreparable injury, must necessarily result in the denial of a preliminary injunction." In re Arthur Treacher's Franchisee Litig., 689 F.2d 1137, 1143 (3d Cir. 1982).

Alyon seeks an order rescinding the allegedly fraudulent transfer of the domain names badbusinessbureau.com, ripoffreport.com, and ripoffrevenge.com from Badbusinessbureau to Xcentric Ventures, LLC and temporarily restraining any similar asset transfers pending final disposition of this action. Because this matter solely concerns the enforcement of a foreign judgment, and not an independent claim for relief, the grant of the preliminary injunctive relief requested by Alyon depends upon whether enforcement of the foreign judgment is likely. Put differently, if there were a foreign judgment deserving of enforcement, then the Court might look favorably upon enjoining an asset transfer found to be designed to inhibit the successful execution upon that judgment. The issue here, then, is whether Alyon has produced sufficient evidence to establish a likelihood of success on the merits of its claim for enforcement of the Saint Christopher judgment. For the reasons set forth below, the Court concludes it has not.[3]

---

[3] Alyon also requests that this Court declare enforceable the asset freeze order already entered by the court in Saint Christopher. However, it does not appear that the asset freeze order survived the final judgment entered in Saint Christopher, as the freeze order issued on March 28 remained in effect "until further order of the court" and the final judgment, which was subsequently issued in July, makes no reference to asset transfers. In any event, without a foundational final order deserving of enforcement, the Court is unwilling to enforce an interim order.

B. Analysis

1. Likelihood of Success on the Merits

Comity is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Hilton v. Guyut, 159 U.S. 113, 163-64 (1895). Under common law principles of international comity, a foreign court's judgment on a matter is conclusive in a federal court when (1) the foreign judgment was rendered by a court of competent jurisdiction, which had jurisdiction over the cause and the parties, (2) the judgment is supported by due allegations and proof, (3) the relevant parties had an opportunity to be heard, (4) the foreign court follows procedural rules, and (5) the foreign proceedings are stated in a clear and formal record. Id. at ___. "Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or obligation." Somportex Ltd. v. Philadelphia Chewing Gum Corp., 453 F.2d 435, 440 (3d Cir. 1972). It is, therefore, not a rule of law, but one of practice, convenience, and expediency. Id.

Where, as here, the jurisdiction of the federal district court is founded upon diversity of citizenship, the law to be applied is the law of the state where the court is located. Id. Accordingly, this Court looks to New Jersey law, which provides that recognition of a judgment of a foreign court under the principles of comity is generally subject to two conditions: (1) that the foreign court had jurisdiction over the subject matter; and (2) that the foreign judgment will not offend the public policy of the State. Fantony v. Fantony, 21 N.J. 525, 533 (1956). In New Jersey, the rule of comity is "grounded in the policy of avoiding conflicts in jurisdiction, unless upon strong grounds, and the general principle that the court which first acquires jurisdiction of an issue has precedence, in the absence of special equities." Id. In articulating the principles of comity, the court in Fantony acknowledged that the governing standard in New Jersey was in accord with Hilton and other decisions of the United States Supreme Court. Id.

In addition, New Jersey has adopted the Foreign Country Money-Judgments Recognition Act ("Act"). See N.J.S.A. 2A:49A-20. New Jersey's courts must recognize a final foreign country judgment for money damages as "conclusive between the parties," unless one of the specific grounds for non-recognition that are enumerated in the Act is applicable. Kam-Tech Sys. Ltd. v. Yardeni, 340 N.J.Super. 414, 422-23 (App. Div. 2001). The pertinent part of the Act reads as follows:

> 2A:49A-20. *Conclusiveness of Foreign Judgment*
>
> a. A foreign country money-judgment is not conclusive if:
> (1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
> (2) the foreign country court did not have personal jurisdiction over the judgment debtor; or
> (3) the foreign country court did not have jurisdiction over the subject matter.
> b. A foreign country money-judgment need not be recognized if:
> (1) the judgment debtor in the proceedings in the foreign country court did not receive notice of the proceedings in sufficient time to enable the judgment debtor to defend;
> (2) the judgment was obtained by fraud;
> (3) the cause of action on which the foreign judgment is based is contrary to the public policy of this State;
> (4) the judgment conflicts with a prior final and conclusive judgment;
> (5) the proceedings in the foreign country court were contrary to an agreement between the parties under which the dispute in question was to be settled, other than by proceedings in that court; or
> (6) in the case of jurisdiction based only on personal service, the foreign country court was a seriously inconvenient forum for the trial of the action.

N.J.S.A. 2A:49A-20. The Act supplies a statutory basis for enforcing foreign judgments, though it expressly limits itself to money judgments. Kam-Tech Sys. Ltd., 340 N.J. Super. at 421.

Given that the final judgment rendered by the Saint Christopher court is composed of both money damages and permanent injunctive relief, the Act governs the enforcement of the money damages component while common law principles of comity, as articulated in Hilton and Fantony, govern the injunctive component. Applying these principles to the present case, the Court has grave reservations as to the propriety of enforcing either aspect–monetary or injunctive–of the foreign judgment. These reservations focus on two questions: (1) whether the foreign procedures comported with principles of due process and (2) whether enforcing this foreign judgment contravenes the public policy of the State of New Jersey.

First, with respect to the money damages, the Court is not convinced that the foreign procedures were consistent with the requirements of due process. Under the Act, a foreign money-judgment is not conclusive if that judgment was "rendered under a system which does not provide impartial tribunals or procedures compatible with the requirement of due process of law." N.J.S.A. 2A:49A-20(a)(1). "The statute simply requires that the foreign procedure be 'compatible with the requirements of due process of law,' namely, that 'the foreign procedures are fundamentally fair and do not offend against basic fairness.'" Kam-Tech Sys. Ltd., 340 N.J. Super. at 425 (citing Society of Lloyd's v. Ashenden, 233 F.3d 473, 477 (7th Cir. 2000)). Alyon alleges that Saint Christopher is subject to the oversight of the Judicial Committee of the Privy Council of England, and that it follows English common law and procedure. Yet, such broad statements as to the design of the Saint Christopher legal system do not address the specific issue before the Court, to wit, whether the foreign procedures employed by the Saint Christopher tribunal in this particular matter comported with basic fairness.

The Court recognizes that it cannot second-guess every judgment rendered by a foreign tribunal or otherwise engage in a meticulous and exacting review of the relevant foreign procedures. Even so, overarching principles of fundamental fairness require at least a brief glance at those procedures. What this glance has revealed in the present case makes the Court highly doubtful as to the basic fairness of the foreign proceedings; indeed, the money-judgment for ten million dollars appears to have been entered without any competent supporting evidence. Having searched the record for the basis of this calculation, it appears to have been based solely on the filing of a Re-Amended Statement of Claim, certified and submitted by De Lara MacClure Taylor, an attorney of the Eastern Caribbean Supreme Court and solicitor for Alyon.

As a preliminary matter, a statement of claim is not competent evidence. But even assuming it were, the Re-Amended Statement of Claim contains no facts supporting either the damages amount or that the damages were caused by the Defendant's conduct.

The Re-Amended Statement of Claim merely states:

> The Claimant has lost revenue from enforceable lawfully incurred charges that the Claimant would otherwise have collected but for the Defendant's conduct. The Defendant's knowing (or at a minimum highly reckless) solicitation and publication and republication of false and defamatory comments for the whole world to see has caused and continues to cause massive and irreparable damage to the Claimant resulting in loss of revenues and business opportunities in an amount difficult to ascertain but not less than US $10,000,000.

Particulars of Special Damage

Decline in payments	$5,597,835.00
Decline in collections	$190,407.00
Burglar alarm	16,000.00
Public relations – crisis management	117,464.00
Public relations – alternative trademark	23,372.00
Legal fees to defend against attacks from the Defendants	750,000.00
Lost working time (est. @ 20% of payroll)	129,000.00
Wasted office supplies (extra purchases)	30,000.00

Delay in bringing customer service in-house	150,000.00
Stagnant paper due to loss of collection services	$3,356,632.00

(Re-Amended Statement of Claim ¶ 69.). Although it contains many similar allegations, such argumentative and conclusory statements in a statement of claim fail to demonstrate any basis for the amount of the judgment. And because Alyon has not filed with this Court any additional evidence that it used to justify this very large damage award, there is an insufficient factual basis in the record to support the enforcement of this ten million dollar judgment.[4]

Moreover, even assuming that Alyon provided competent evidence as to its loss of revenues and business opportunities (which it did not), it failed to proffer sufficient evidence as to causation, which, as in most situations, is a crucial element here. The economic consequences of defamatory statements are inherently elusive, thus demanding at least some showing of a causal relationship between any damage amount and a defendant's actions. Alyon, however, assumes a causal connection that is anything but obvious. For instance, Alyon merely claimed, without factual support, that Badbusinessbureau's conduct caused consumers to refuse payment, resulting in losses of 5.5 million dollars in "decline in payments," $190,000 in "decline in collections," and 3.3 million dollars in "stagnant paper due to loss of collection services." But in

[4] The record shows that Alyon submitted an affidavit from Stephane Touboul in support of its application for a preliminary injunctive relief in Saint Christopher. However, it is not clear whether the Saint Christopher court considered this affidavit in entering the final judgment. Indeed, Alyon does not contend that this affidavit was ever considered by the court, but rather argues that the "St. Kitts judgment issued based on the pleaded special damages claim." Additionally, the final judgment itself states that it was based only on the statement of claim. In any event, even assuming the Saint Christopher court did consider the affidavit in calculating the damages award, it contains the same argumentative and conclusory statements (but without any itemization of damages); and it therefore does not alter this Court's conclusion that there was insufficient evidence to support the issuance of a ten million dollar judgment.

the absence of supporting evidence, there can be no reasonable certainty that Badbusinessbureau is responsible for these losses. These losses may be attributable to many sources, each of which is only partially responsible for the loss in payments and collections. This is especially true where the record contains alternative facts suggesting causation from an entirely different source, i.e., state and federal investigations of Alyon's business practices. Indeed, such a causal nexus is lacking as to all of Alyon's itemized damages.

To render a ten million dollar judgment without the benefit of supporting facts as to the amount of damages and causation transgresses basic norms of fairness, even in a default situation. It is a well-established principle of jurisprudence in this country that even when a default judgment is warranted based on a party's failure to defend, the allegations in the complaint with respect to damages are not deemed to be true. Comdyne I, Inc. v. Corbin, 908 F.2d 1142, 1149 (3d Cir. 1990) (relying on Thomson v. Wooster, 114 U.S. 104, 111 (1885)); Au Bon Pain Corp. v. Artect, Inc., 653 F.2d 61, 65 (2d Cir. 1981); Geddes v. United Fin. Group, 559 F.2d 557, 560 (9th Cir. 1977); see also Fed. R. Civ. P. 55(b)(2) (providing when granting a default judgment, if "it is necessary to take account or to determine the amount of damages or to establish the truth of any averment by evidence . . . the court may conduct such hearings or order such references as it deems necessary and proper"). Thus, in the default situation, there must be sufficient evidence to support a damages award. See Credit Lyonnais Securities (USA), Inc. v. Alcantara, 183 F.3d 151, 154-55 (2d Cir. 1999) (holding that district court had insufficient evidence upon which to enter amount of judgment where it only had allegations in complaint and affidavit of plaintiff's counsel); Transatlantic Marine Claims Agency, Inc. v. Ace Shipping Corp.,109 F.3d 105, 111 (2d Cir. 1997) (holding that district court did not satisfy its obligation to ensure that damages were appropriate where it merely accepted at face value plaintiff's statements in its complaint).

It is, of course, true that our jurisprudence does not require a perfect match between the procedures of a foreign court and those used by the courts of the United States. What counts, however, is "the basic fairness of the foreign procedures." Kam-Tech Sys. Ltd., 340 N.J. Super. at 425. Although Badbusinessbureau cannot ignore a duly-entered default judgment, the absence of any competent evidence justifying the amount of the judgment entered in Saint Christopher contradicts any claim that those procedures were compatible with due process of law. This holds true notwithstanding the fact that the Saint Christopher legal system purports to follow English procedures. Compare CIBC Mellon Trust Co. v. Mora Hotel Corp., N.V., 100 N.Y.2d 215, 220 (2003) (enforcing default judgments of roughly $330 million dollars, which were entered in England following damages assessment hearings). As such, pursuant to the standard set forth in the Foreign Country Money-Judgments Act, principles of basic fairness will likely preclude enforcement of the money damages part of the foreign judgment.

Second, enforcement of the injunctive relief granted by the Saint Christopher court is likely to contravene the public policy of the State of New Jersey, as it purports to restrain Badbusinessbureau from "publishing and distributing by way of posting on [its] websites . . . or anywhere whatsoever any derogatory and/or defamatory material about [Alyon]." Such an order operates as a prior restraint on speech, which, in most relevant situations, triggers constitutional alarm. See Southeastern Promotions, Ltd. v. Conrad, 420 U.S. 546, 553 (1974); see also CBS, Inc. v. Davis, 510 U.S. 1315, 1317 (1994) ("Subsequent civil or criminal proceedings, rather than prior restraints, ordinarily are the appropriate sanction for calculated defamation or other misdeeds in the First Amendment context."). Furthermore, insofar as this foreign judgment seeks to suppress derogatory, as well as defamatory speech, it extends to constitutionally-protected speech, which is not actionable in any event. In this respect, it may further offend New Jersey's public policy.

Alyon argues that it does not seek a prior restraint on expression since it merely seeks enforcement of a final judgment duly entered by the court in Saint Christopher. This argument misses the point that enforcement of the foreign judgment by this Court will undoubtedly operate as a prior restraint on constitutionally-protected speech. Alyon also argues that because Badbusinessbureau was incorporated in Nevis, it has waived any constitutional protection. This argument is also unavailing. Badbusinessbureau has its principal place of business in Arizona, the Internet Service Provider is in Arizona, the volunteers who assist with the website reside in Arizona, and its founder, Ed Magedson, resides in and operates the website from Arizona. Perhaps more importantly, the website targets American corporations and exists as an expressive forum for American consumers. It is therefore somewhat misleading to label Badbusinessbureau as a foreign corporation. Although true, it obscures the fact that the United States is the focal point of Badbusinessbureau's activities. The implications of an injunction, moreover, extend beyond Badbusinessbureau to those American consumers who utilize its website as a forum for free expression. To enjoin Badbusinessbureau from publishing any derogatory statements about Alyon is also to restrain the constitutionally-protected speech of American (including New Jersey) consumers who routinely use the website as a channel of communication. The Court is extremely hesitant to exercise such powers.

Finally, it bears mentioning that Alyon has been the subject of numerous investigations by public authorities in this country, and indeed, is a party to a lawsuit brought against it by the Federal Trade Commission. While not evidence of the impropriety of Alyon's own business practices, this fact surely increases the Court's reluctance to enforce such a broad and sweeping foreign judgment.

In sum, Alyon has failed to carry its burden of demonstrating a likelihood of success on the merits of its enforcement claim. The grant of a preliminary injunction is therefore unwarranted.

2. Remaining Factors

Because Alyon has failed to demonstrate a reasonable likelihood of success on the merits, the Court need not consider the remaining factors for the grant of a preliminary injunction.

CONCLUSION

Accordingly, **IT IS** on this 23rd of January 2004

ORDERED that Defendant Badbusinessbureau.com, LLC's motion to dismiss the complaint as to lack of personal jurisdiction is denied; and it is further

ORDERED that Plaintiff Alyon Technologies' motion for a preliminary injunction is denied.

/s/ John C. Lifland, U.S.D.J.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FILED
FEB - 6 2004
CLERK, U.S. DISTRICT COURT
By ________ Deputy

MCW, INC., d/b/a BERNARD HALDANE ASSOCIATES,

PLAINTIFF,

v.

BADBUSINESSBUREAU.COM, LLC, d/b/a,WWW.RIPOFFREPORT.COM and WWW.BADBUSINESSBUREAU.COM, and EDWARD MAGEDSON, a/k/a ED MAGIDSON,

DEFENDANTS.

CIVIL ACTION

No. 3:02-CV-2727-G

PLAINTIFF'S SUPPLEMENTATION TO RECORD
WITH FEDERAL COURT DECISION FROM NEW JERSEY

Dated: February 6, 2004

Respectfully submitted,

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